IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Bail Appl..No. 3801 of 2007()

CRIME NOL.75/04 OF ANCHALAMOODU POLICE STATION.

PETITIONER : 3RD ACCUSED

SAJU, S/O.NADARAJAN
159(7/137) KILITHATTAVILA,
PAMPALIL, PERINAD, KOLLAM

BY ADV. SRI.P.M.HABEEB

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE
ANCHALAMOODU POLICE STATON
THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI. P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3801 OF 2007

Dated this the 3rd day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused and he faces allegations, inter alia, under Secs.324 and 308 of the IPC. The alleged incident took place on 24/3/04. In the F.I.R. registered, the petitioner is not arrayed as an accused. Later, the 3rd accused originally arrayed was deleted and the petitioner was included as the 3rd accused. A crime was initially registered only under Sec.324 of the IPC. Later, allegation under Sec.308 of the IPC has also been included. The petitioner apprehends arrest. The learned counsel for the petitioner submits that the petitioner is innocent and false and untenable allegations have subsequently been raised against the petitioner. To vex and harass him, allegation under Sec.308 of the IPC has also been included. In these circumstances, directions under Sec.438 of

the Cr.P.C. may be issued in favour of the petitioner, it is prayed.

2. The learned Public Prosecutor does not oppose the application. The learned Public Prosecutor submits that the final report has already been filed and it is for the petitioner now to appear before the learned Magistrate and seek regular bail in the normal and ordinary course.

3. The learned counsel for the petitioner submits that in the peculiar facts and circumstances of this case, notwithstanding the fact that the final report has already been filed, invoking the dictum in **Bharat Chaudhary and another v. State of Bihar –** AIR 2003 SC 4662, directions may be issued under Sec.438 of the Cr.P.C.

4. In the peculiar facts and circumstances of this case, I am satisfied that such a direction can be issued in favour of the petitioner.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 10/7/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 4 p.m. on 11/7/07 and 12/707 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 10/7/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 10/707.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge